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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,797	03/15/2002	Richard A. Hynes	4002-2968	3276

7590 04/03/2006

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EXAMINER

DAVIS, DANIEL J

ART UNIT PAPER NUMBER

3733

DATE MAILED: 04/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/099,797

Applicant(s)

HYNES, RICHARD A.

Examiner

D. Jacob Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-11, 41, 42, 45-48 and 51-60 is/are pending in the application.
- 4a) Of the above claim(s) 45 and 47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-11, 41, 42, 46, 48 and 51-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 8-11, 41, 46, 48 and 55-57 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. "Wherein said mounting bracket is separate from at least one of said cross supports" is not disclosed in the elected embodiment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 8-11, 41, 46, 48 and 55-57 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,437,669 to Yuan et al. Yuan discloses a system comprising a plurality of pedicle screws 30 spaced apart in two columns (see figure 1); a longitudinal support or spinal rod 22 along a path between the columns (see Figure 1); cross supports 50, each support 50 having two ends and a U-shaped mounting bracket or mounting piece 52 attached midway between the ends and one end attached to one of the pedicle screws and the other end attached to another pedicle screw (see Figure 1). The mounting bracket 52 and the longitudinal support are attached. Mounting brackets have a yoke 51. The pedicle screws have a multi-axial cross support end receiver, e.g. the head of the pedicle screws can be placed on different axes by rotating the whole screw, which includes the head, around the cross supports. Clearly, the embodiment of Figure 1 shows at least four pedicle screws. The cross supports 50 include what can be considered arms 53 and 54. figure 1 shows that a portion of an arm connected to a screw and a portion of another arm connected to another screw are coplanar in a plane substantially non-parallel to the longitudinal support.

Claims 8-11, 41, 42, 46, 48 and 51-60 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,531,747 to Ray. As illustrated in figure 2, Ray discloses pedicle screws in two columns, a longitudinal support 46, cross supports/arms 22, 24, 32, and a substantially U-shaped mounting bracket 176 (figure 3) having yokes. The proximally threaded end of the screws comprise multi-axial cross support receivers. Regarding claims 41 and 42, arms 22, 24 are connected to the same mounting piece.

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They are coplanar in a plane perpendicular to the page as viewed in figure 2. The arms 22, 24 work together as part of a single arm.

Claims 41, 42, 46, 48 and 51-60 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,702,392 to Wu et al. Wu discloses in figures 3 and 4 pedicle screws having cross support receivers and being formed in two columns, a mounting piece including element 40 and U-shaped elements forming channel 16, coaxial/coplanar arms 11 connected to a longitudinal support 30.

Response to Arguments

Applicant's arguments filed December 7, 2005 have been fully considered but they are not persuasive. The Yuan reference discloses a mounting bracket that is as "separate" from the cross supports as applicants'. The patent unambiguously discloses arms. New rejections anticipated by the Ray and Wu patents are applied as described above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Jacob Davis whose telephone number is (571) 272-4693. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on (571) 272-4719. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJD



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER